

Introduced by Committee on Transportation and Housing (Senators DeSaulnier (Chair), Gaines, Harman, Huff, Kehoe, Lowenthal, Pavley, Rubio, and Simitian)

February 17, 2011

An act to amend Sections 1363 and 1363.05 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

SB 563, as introduced, Committee on Transportation and Housing. Common interest developments: meetings.

Existing law provides for the creation of common interest developments and requires that a common interest development be managed by an association that may or may not be incorporated. Existing law prescribes requirements for meetings of the board of directors of the association that manages the development.

This bill would permit meetings of the board of directors of a common interest development association to be conducted by teleconference, as specified, by revising the definition of a meeting for these purposes. The bill would require that a teleconference meeting be conducted in a manner that protects the rights of members of the association and otherwise complies with other requirements governing common interest developments. The bill would also require that the notice of a teleconference meeting identify at least one physical location so that members of the association may attend and would require that at least one member of the board of directors be present at that location. The bill would prohibit the board of directors from hearing, discussing, deliberating, or taking action on any item of business outside of a meeting or an emergency meeting, and would provide that a meeting is not a series of electronic transmissions, such as electronic mail, except

to conduct an emergency meeting. The bill would repeal provisions that generally allow the board of directors to consider any proper matter at a meeting even if it has not been noticed as an action item for the meeting.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1363 of the Civil Code is amended to
2 read:

3 1363. (a) A common interest development shall be managed
4 by an association that may be incorporated or unincorporated. The
5 association may be referred to as a community association.

6 (b) An association, whether incorporated or unincorporated,
7 shall prepare a budget pursuant to Section 1365 and disclose
8 information, if requested, in accordance with Section 1368.

9 (c) Unless the governing documents provide otherwise, and
10 regardless of whether the association is incorporated or
11 unincorporated, the association may exercise the powers granted
12 to a nonprofit mutual benefit corporation, as enumerated in Section
13 7140 of the Corporations Code, except that an unincorporated
14 association may not adopt or use a corporate seal or issue
15 membership certificates in accordance with Section 7313 of the
16 Corporations Code.

17 The association, whether incorporated or unincorporated, may
18 exercise the powers granted to an association in this title.

19 (d) Meetings of the membership of the association shall be
20 conducted in accordance with a recognized system of parliamentary
21 procedure or any parliamentary procedures the association may
22 adopt.

23 ~~(e) Notwithstanding any other provision of law, notice of~~
24 ~~meetings of the members shall specify those matters the board~~
25 ~~intends to present for action by the members, but, except as~~
26 ~~otherwise provided by law, any proper matter may be presented~~
27 ~~at the meeting for action.~~

28 ~~(f)~~

29 (e) Members of the association shall have access to association
30 records, including accounting books and records and membership
31 lists, in accordance with Article 3 (commencing with Section 8330)

1 of Chapter 13 of Part 3 of Division 2 of Title 1 of the Corporations
2 Code. The members of the association shall have the same access
3 to the operating rules of the association as they have to the
4 accounting books and records of the association.

5 ~~(g)~~

6 (f) If an association adopts or has adopted a policy imposing
7 any monetary penalty, including any fee, on any association
8 member for a violation of the governing documents or rules of the
9 association, including any monetary penalty relating to the
10 activities of a guest or invitee of a member, the board of directors
11 shall adopt and distribute to each member, by personal delivery
12 or first-class mail, a schedule of the monetary penalties that may
13 be assessed for those violations, which shall be in accordance with
14 authorization for member discipline contained in the governing
15 documents. The board of directors shall not be required to distribute
16 any additional schedules of monetary penalties unless there are
17 changes from the schedule that was adopted and distributed to the
18 members pursuant to this subdivision.

19 ~~(h)~~

20 (g) When the board of directors is to meet to consider or impose
21 discipline upon a member, the board shall notify the member in
22 writing, by either personal delivery or first-class mail, at least 10
23 days prior to the meeting. The notification shall contain, at a
24 minimum, the date, time, and place of the meeting, the nature of
25 the alleged violation for which a member may be disciplined, and
26 a statement that the member has a right to attend and may address
27 the board at the meeting. The board of directors of the association
28 shall meet in executive session if requested by the member being
29 disciplined.

30 If the board imposes discipline on a member, the board shall
31 provide the member a written notification of the disciplinary action,
32 by either personal delivery or first-class mail, within 15 days
33 following the action. A disciplinary action shall not be effective
34 against a member unless the board fulfills the requirements of this
35 subdivision.

36 ~~(i)~~

37 (h) Whenever two or more associations have consolidated any
38 of their functions under a joint neighborhood association or similar
39 organization, members of each participating association shall be
40 (1) entitled to attend all meetings of the joint association other than

1 executive sessions, (2) given reasonable opportunity for
2 participation in those meetings, and (3) entitled to the same access
3 to the joint association's records as they are to the participating
4 association's records.

5 (j)

6 (i) Nothing in this section shall be construed to create, expand,
7 or reduce the authority of the board of directors of an association
8 to impose monetary penalties on an association member for a
9 violation of the governing documents or rules of the association.

10 SEC. 2. Section 1363.05 of the Civil Code is amended to read:

11 1363.05. (a) This section shall be known and may be cited as
12 the Common Interest Development Open Meeting Act.

13 (b) Any member of the association may attend meetings of the
14 board of directors of the association, except when the board
15 adjourns to executive session to consider litigation, matters relating
16 to the formation of contracts with third parties, member discipline,
17 personnel matters, or to meet with a member, upon the member's
18 request, regarding the member's payment of assessments, as
19 specified in Section 1367 or 1367.1. The board of directors of the
20 association shall meet in executive session, if requested by a
21 member who may be subject to a fine, penalty, or other form of
22 discipline, and the member shall be entitled to attend the executive
23 session. *A member of the association shall be permitted to*
24 *participate in the portion of a teleconference meeting that is open*
25 *to members, and that portion of the meeting shall be audible to*
26 *the members in a location specified in the notice of the meeting.*

27 (c) Any matter discussed in executive session shall be generally
28 noted in the minutes of the immediately following meeting that is
29 open to the entire membership.

30 (d) The minutes, minutes proposed for adoption that are marked
31 to indicate draft status, or a summary of the minutes, of any
32 meeting of the board of directors of an association, other than an
33 executive session, shall be available to members within 30 days
34 of the meeting. The minutes, proposed minutes, or summary
35 minutes shall be distributed to any member of the association upon
36 request and upon reimbursement of the association's costs for
37 making that distribution.

38 (e) Members of the association shall be notified in writing at
39 the time that the pro forma budget required in Section 1365 is
40 distributed, or at the time of any general mailing to the entire

1 membership of the association, of their right to have copies of the
2 minutes of meetings of the board of directors, and how and where
3 those minutes may be obtained.

4 (f) Unless the time and place of meeting is fixed by the bylaws,
5 or unless the bylaws provide for a longer period of notice, members
6 shall be given notice of the time and place of a meeting as defined
7 in subdivision (j), except for an emergency meeting, at least four
8 days prior to the meeting. Notice shall be given by posting the
9 notice in a prominent place or places within the common area and
10 by mail to any owner who had requested notification of board
11 meetings by mail, at the address requested by the owner. Notice
12 may also be given, by mail or delivery of the notice to each unit
13 in the development or by newsletter or similar means of
14 communication. The notice shall contain the agenda for the
15 meeting.

16 (g) An emergency meeting of the board may be called by the
17 president of the association, or by any two members of the
18 governing body other than the president, if there are circumstances
19 that could not have been reasonably foreseen which require
20 immediate attention and possible action by the board, and which
21 of necessity make it impracticable to provide notice as required
22 by this section.

23 (h) The board of directors of the association shall permit any
24 member of the association to speak at any meeting of the
25 association or the board of directors, except for meetings of the
26 board held in executive session. A reasonable time limit for all
27 members of the association to speak to the board of directors or
28 before a meeting of the association shall be established by the
29 board of directors.

30 (i) (1) Except as described in paragraphs (2) to (4), inclusive,
31 the board of directors of the association may not discuss or take
32 action on any item at a nonemergency meeting unless the item was
33 placed on the agenda included in the notice that was posted and
34 distributed pursuant to subdivision (f). This subdivision does not
35 prohibit a resident who is not a member of the board from speaking
36 on issues not on the agenda.

37 (2) Notwithstanding paragraph (1), a member of the board of
38 directors, a managing agent or other agent of the board of directors,
39 or a member of the staff of the board of directors, may do any of
40 the following:

1 (A) Briefly respond to statements made or questions posed by
2 a person speaking at a meeting as described in subdivision (h).

3 (B) Ask a question for clarification, make a brief announcement,
4 or make a brief report on his or her own activities, whether in
5 response to questions posed by a member of the association or
6 based upon his or her own initiative.

7 (3) Notwithstanding paragraph (1), the board of directors or a
8 member of the board of directors, subject to rules or procedures
9 of the board of directors, may do any of the following:

10 (A) Provide a reference to, or provide other resources for factual
11 information to, its managing agent or other agents or staff.

12 (B) Request its managing agent or other agents or staff to report
13 back to the board of directors at a subsequent meeting concerning
14 any matter, or take action to direct its managing agent or other
15 agents or staff to place a matter of business on a future agenda.

16 (C) Direct its managing agent or other agents or staff to perform
17 administrative tasks that are necessary to carry out this subdivision.

18 (4) (A) Notwithstanding paragraph (1), the board of directors
19 may take action on any item of business not appearing on the
20 agenda posted and distributed pursuant to subdivision (f) under
21 any of the following conditions:

22 (i) Upon a determination made by a majority of the board of
23 directors present at the meeting that an emergency situation exists.
24 An emergency situation exists if there are circumstances that could
25 not have been reasonably foreseen by the board, that require
26 immediate attention and possible action by the board, and that, of
27 necessity, make it impracticable to provide notice.

28 (ii) Upon a determination made by the board by a vote of
29 two-thirds of the members present at the meeting, or, if less than
30 two-thirds of total membership of the board is present at the
31 meeting, by a unanimous vote of the members present, that there
32 is a need to take immediate action and that the need for action
33 came to the attention of the board after the agenda was posted and
34 distributed pursuant to subdivision (f).

35 (iii) The item appeared on an agenda that was posted and
36 distributed pursuant to subdivision (f) for a prior meeting of the
37 board of directors that occurred not more than 30 calendar days
38 before the date that action is taken on the item and, at the prior
39 meeting, action on the item was continued to the meeting at which
40 the action is taken.

(B) Before discussing any item pursuant to this paragraph, the board of directors shall openly identify the item to the members in attendance at the meeting.

(j) The board of directors shall not hear, discuss, deliberate, or take action on any item of business outside of a meeting or an emergency meeting.

(j)

(k) (1) As used in this section, “meeting” includes any means:

(A) A congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate upon any item of business scheduled to be heard by the board, except those matters that may be discussed in executive session that is within the authority of the board.

(B) A teleconference in which a majority of the members of the board, in different locations, are connected by electronic means, through audio or video or both. A teleconference meeting shall be conducted in a manner that protects the rights of members of the association and otherwise complies with the requirements of this title. The notice of the teleconference meeting shall identify at least one physical location so that members of the association may attend and at least one member of the board of directors shall be present at that location. Participation in a teleconference meeting constitutes presence at that meeting as long as all board members participating in the meeting are able to hear one another and members of the association speaking on matters before the board.

(2) Notwithstanding Section 7211 of the Corporations Code, “meeting” does not mean a series of electronic transmissions, including, but not limited to, electronic mail, except that electronic transmissions may be used as a method of conducting an emergency meeting.